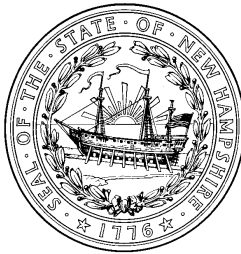


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NEWSLETTER

News Editor: Penny Taylor, Administrator

WINTER, 2008

BOARD NEWS:

At the December, 2007 meeting, the Board elected officers for the coming year. Kevin R. Costin, P.A. of Manchester was re-elected as President and Amy Feitelson, M.D. of Portsmouth was elected as Vice President and Chair of the Medical Review Subcommittee (MRSC).

The Board would like to welcome the following new members: David Micciche of Amherst, New Hampshire, public member. Robert P. Cervenka, M.D., replacing Paul Scibetta, D.O. Dr. Cervenka is a board certified OB/GYN practicing in Manchester.

The Board would like to thank Paul Scibetta, D.O. who served on the Board of Medicine from July 28, 2004 through June 30, 2007.

The Board would like to thank Clint Koenig, M.D., Interim State Medical Director, who served on the Board of Medicine from June 7, 2006 through October 3, 2007 pursuant to RSA 329:2.

The Board would like to thank Bruce J. Friedman, M.D., who served on the Board of Medicine from February 14, 1996 through February 6, 2008. During his term, he served 2 years as President. The entire Board thanks Dr. Friedman for all of his efforts and those countless extra duties which kept the Board running smoothly in order to protect the citizens of New Hampshire.

Personnel

The Board would like to congratulate Steve Davis on his retirement from the Board staff effective September 27, 2007. Mr. Davis was with the Board of Medicine for 6 ½ years.

The Board would like to congratulate Barbara Davis on her retirement from the Board staff effective April 26, 2007. Mrs. Davis was with the Board of Medicine for 5 ½ years.

The Board would like to welcome the following staff members:

Pamela Lessieur, who joined the Board staff in April, 2007. Pam is the new license clerk replacing Barbara Davis.

Nichole Taylor, who joined the Board staff in October, 2007. Nichole is the new license clerk replacing Steve Davis.

Physician Vacancies on the Medical Review Subcommittee:

The Medical Review Subcommittee (MRSC) has three immediate vacancies for physicians in the following specialties: internal medicine, general surgery and obstetrics and gynecology.

The MRSC is a committee composed of 5 physicians, 3 public members and the Vice President of the Board of Medicine, who serves as the Chair. Also attending the meetings, but not voting, is an investigator assigned to the Board, the Physician Administrator/Investigator, and two Assistant Attorney Generals from the Administrative Prosecutions Unit ("APU") of the Consumer Protection and Anti-Trust Bureau, and the recording secretary. The Committee investigates all complaints including those received from consumers, hospitals, physicians, professional societies and insurance companies. The Committee also reviews all claims and writs. The MRSC is charged with the responsibility to investigate impartially and to complete a thorough review of the applicable medical records, other pertinent information, and the physician response.

The term for Committee members is 3 years. The Committee meets the 3rd Thursday of every month at 1:00 P.M. There is an honorarium of \$100 plus mileage for each meeting.

If you are interested in applying, please fax your curriculum vitae and letter of interest to Penny Taylor, Medical Board Administrator at (603) 271-6702.

DEA PUBLISHES FINAL RULE ON MULTIPLE PRESCRIPTIONS FOR SCHEDULE II CONTROLLED SUBSTANCES

New Hampshire regulations limit Schedule II prescriptions to be filled for either 34 days or 100 dosage units, (whichever is less). No refills are allowed by DEA or NH regulations for Schedule II drugs. However, the DEA has published a new rule, effective December 19, 2007, which allows practitioners to write up to three prescriptions for the same drug for a patient on the same day, to be filled sequentially. This new rule reduces the need for patients to return frequently to a physician's office for new prescriptions.

Details on the new Rule:

1. Each prescription must be written on a separate prescription blank, must contain the actual date that the prescription was written, and must not be post-dated.
2. Although the DEA rule allows the multiple prescriptions to provide a patient with up to a 90 day supply, it is superceded by New Hampshire law, limiting each prescription to a 34 day supply or 100 dosage units (WHICHEVER IS LESS). However, the total amount of all three prescriptions cannot exceed a 90 day supply.
3. Each prescription must contain the earliest date on which a pharmacy may fill each prescription; i.e., "do not fill before ____." The first prescription does not need to contain this information if the prescriber intends for it to be filled immediately.
4. The prescribing physician or physician's assistant is advised to check the intended fill dates to make sure that they do not fall on holidays or days the pharmacy is closed. Additionally, the prescriber should calculate the "do not fill before date" so that subsequent prescriptions are allowed near the end of the prior prescription, to ensure that patients will not experience a gap in their treatment.
5. Examples of Schedule II drugs are hydromorphone (Dilaudid), meperidine (Demerol), methadone, morphine, oxycodone (OxyContin, Percocet, Tylox, Roxicet, Roxicodone).

(Continued on the next page)

Example:

- A. Patient A takes 10 Percocet 5/325 (oxycodone 5 mg/acetaminophen 325 mg)/day.
- B. You wish to write three prescriptions, which must all be dated the day you see the patient.
- C. As per #2 above, by N.H. law, the maximum for each prescription is limited to 100 tablets, as a 34 day supply exceeds that number.
- D. You would write three prescriptions, each for 100 tablets. On the second and third prescriptions, you write: "Do not fill before _____." Those dates would be near the end of the prior prescription.
- E. In this case, because the patient takes 10 Percocet/day, each prescription lasts only ten days, and all three prescriptions last only 30 days.

****IMPORTANT NOTICE: RELEASE OF MEDICAL RECORDS:**

The Board, on July 11, 2007, adopted the following rules regarding the release of medical records. The Code of Administrative Rules, Med 501.02(f)(4) states:

"(f) A licensee shall promptly honor requests made by a patient or an authorized agent of a patient, for complete copies of the patient's medical record in accordance with the following standards:

(4) Upon receipt of a written release, the requested transfer of medical records shall:

- a. Not be delayed, including for non-payment of services or non-payment of copying costs and of costs for transmitting of medical records; and
- b. Be accomplished in any case within 30 days from the receipt of the signed release, unless the nature of the medical treatment requires an immediate response from the licensee."

Please be advised that physicians are required to release the medical records whether or not they have received payment for those medical records.

RULES REGARDING LEGIBLE RECORDS:

It is of no new news that legibility of handwriting in medical records is an issue. Additionally, there have been a number of complaints to the Board of Medicine either directly on this issue or implicated in resolving a claim. Only occasionally in the past has illegible handwriting led to disciplinary action, primarily when the illegibility itself led to harm or interfered with resolution of a matter. However, New Hampshire Regulations require that medical records be legible. See below. Legibility of medical records may directly impact patient safety in a number of ways; is crucial in the event of needing to transfer records to another physician, particularly if the patient is a poor historian; when the history of medication at issue; for the Board of Medicine to investigate claims; and to honor a patient's right to receive and understand their records. Given the pervasiveness of poor handwriting, the statutory requirement, and the prevalent advent of electronic medical records, the Board's leniency and obligation on this issue is being revisited and this word of caution is being issued.

Med 501.02(e) of the New Hampshire Code of Administrative rules reads:

"(e) Records shall be entirely legible and include but not be limited to:

- (1) A history, an exam, a diagnosis and a plan appropriate for the licensee's specialty; and
- (2) Documentation of all drug prescriptions including name and dose."

CHANGE IN THE DEATH REPORTING LAW

House Bill 345 was signed into law during the 2007 legislative session. This law makes several changes to the way death is reported in the state. Among other changes, the law includes Advanced Registered Nurse Practitioners in the death registration process and requires both ARNPs and certifying physicians to use the state's death reporting software to certify death and enter in cause of death information. The following passage indicates how the new law modifies RSA 290 with regard to reporting death in New Hampshire to the state's Division of Vital Records Administration.

290:1 Death Records. Whenever a person shall die, the physician *or advanced registered nurse practitioner* attending at the last sickness shall complete and deliver to the funeral director, next-of-kin as defined in RSA 290:16, VI, or designated agent under RSA 290:17 or shall complete electronically and forward immediately to the division of vital records administration, a death record, duly signed, setting forth, as far as may be, the facts required by the department of state, division of vital records administration pursuant to RSA 5-C:63. The cause or causes of death shall be printed or typed on all records required to be furnished under this section. The funeral director, next-of-kin, or designated agent shall transmit electronically the record of death to the division of vital records administration *and the certifying physician or advanced registered nurse practitioner shall then electronically complete the cause of death information into the transmitted record.*

January 1, 2008 was the effective date for these changes. Before this effective date, physicians and ARNPs that are involved in death reporting should have already contacted the Division of Vital Records Administration and request a user name and password for the state's death reporting software, as well as obtain training in the use of our software to complete the cause of death information in partially complete death records. The contact for this process is Steve Wurtz, and Steve can be reached at 271-4655, or swurtz@sos.state.nh.us.

Pursuant to RSA 329:18, VIII, the Board is required to investigate ALL consumer complaints. A total of 330 consumer complaints, writs from the Courts, malpractice claims and complaints from other sources were received between January 1, 2007 and December 31, 2007. The Board has issued 74 confidential letters of concern, pursuant to RSA 329:17, VII-a, during that time frame. These letters advise the licensee that while there is insufficient evidence to support disciplinary action, the Board believes the physician should modify or eliminate certain practices, and that continuation of the activities which led to the information being submitted to the Board may result in action against the licensee's license. These letters are not released to the public or any other licensing authority, except that the letters may be used as evidence in subsequent disciplinary proceedings by the Board. The remainder of these complaints, writs, malpractice claims and complaints from other sources resulted in "no further action."

The following final board actions were taken by the Board from January 1, 2007 through December 31, 2007.

Joel I. Wagman, M.D. – Amherst, NH

02/14/07 - The Board of Medicine approved a Settlement Agreement for Joel Wagman, M.D. Dr. Wagman was terminated from his employment for improperly altering a medical record. He is reprimanded and assessed an administrative fine in the amount of \$1000.00.

Christopher G. Carter, P.A. – Bedford, NH

03/13/07 - The Board of Medicine approved a Settlement Agreement for Christopher Carter, P.A. The Board received information that Mr. Carter attempted to obtain controlled drugs with forged prescriptions. He is reprimanded and his license is suspended for a period of one year and he shall continue to participate in the NH PHP.

Andrew H. Glatt, M.D. – Los Banos, CA

03/13/07 - The Board of Medicine approved a Settlement Agreement for Andrew H. Glatt, M.D. The Medical Board of California issued an administrative order restricting Dr. Glatt's license. Accordingly, the New Hampshire Board has taken reciprocal action. Dr. Glatt's license is restricted and he is required to fulfill certain conditions to maintain his license due to self-reported substance abuse and mental health issues. His license is under probationary status for a period of seven years, retroactive to August 1, 2006.

Douglas R. Howard, M.D. – Wakefield, MA

03/13/07 - The Board of Medicine approved a Settlement Agreement for Douglas R. Howard, M.D. The Board of Registration in Medicine for the Commonwealth of Massachusetts issued a final administrative order. Accordingly, the New Hampshire Board has taken reciprocal action. Dr. Howard's license is revoked retroactive to February 2, 2005, the date on which he entered into a voluntary agreement with the Massachusetts Board not to practice medicine. Additionally, he must abide by all conditions placed upon him by the Massachusetts Board.

Philip V. Maiorano, M.D. – Gilford, NH

03/13/07 - The Board of Medicine approved a Settlement Agreement for Philip Maiorano M.D. The Board received information that Dr. Maiorano failed to report the disposal of controlled substances to the DEA. Dr. Maiorano is reprimanded and is required to participate in a program of continuing medical education, specifically, an intensive course in controlled substance management. He is assessed an administrative fine in the amount of \$2,500.00. He shall not be in possession of controlled drugs, other than during the regular course of business in the hospital, nor shall he directly dispense controlled drugs to patients in any manner.

James A. Kowles, M.D. – Windsor, VT

04/9/07 - The Board of Medicine issued a final order in the matter of James Kowles, M.D. Subsequent to an adjudicatory hearing, the Board found Dr. Kowles committed sexual misconduct. Dr. Kowles' license is suspended for five years and he is required to participate in a program of continuing medical education, specifically in boundary violations. He is assessed an administrative fee in the amount of \$1,000.

Donald R. McGee, M.D. - Seabrook, NH

06/13/2007 - The Board of Medicine approved a Settlement Agreement for Donald R. McGee, M.D. The Board received information that Dr. McGee hired an individual, who had a history of drug abuse and with whom Dr. McGee had a personal relationship, to assist with the administration of the office-based opioid dependence treatment. The Board also received information that Dr. McGee engaged in a social relationship including engaging in alcohol consumption with an individual who Dr. McGee treated for anxiety, depression, and in the opioid addiction treatment practice. The Board also received information that prior to July 2004, Dr. McGee maintained medical records in a location in his office where a patient or other third party could obtain, but was not known to have obtained, unauthorized access to confidential patient records; and that Dr. McGee pleaded guilty to a driving under the influence charge. Dr. McGee's license is suspended for a period of eighteen months retroactive to July 22, 2005. During the first two years in which Dr. McGee returns to practice he shall have his supervisor provide the Board with letters on a quarterly basis. Dr. McGee has entered into a five-year contract with the PHP and his Psychiatrist shall file quarterly reports, under seal, with the Board.

Timothy D. Brown, M.D. – Sherborn, MA

7/30/07 – The Board issued an order terminating the conditions in Dr. Brown's July 11, 2006 Settlement Agreement.

Yuki Igari, M.D. – Manchester, NH

8/9/07 - The Board of Medicine approved a Settlement Agreement for Yuki Igari, M.D. The Board received information that Dr. Igari reviewed confidential patient medical information for eight (8) patients without authorization and without having a professional physician-patient relationship with any of the eight individuals. The Board also received information that Dr. Igari violated patient confidentiality by instructing her daughter to assist her in preparing letters to patients. Dr. Igari is reprimanded and her license is suspended for a period of three months. The period of suspension is retroactively commencing December 26, 2006. Dr. Igari is assessed an administrative fine in the amount of eight thousand dollars (\$8,000).

Gail L. Dolbear, M.D. – Manlius, NY

11/07/07 - The Board of Medicine accepted a Voluntary Surrender of License from Gail L. Dolbear, M.D. Professional misconduct allegations are pending against Dr. Dolbear before the Board concerning the restriction of Dr. Dolbear's surgical privileges by Southern New Hampshire Medical Center.

Richard P. Levy, M.D. – Quechee, VT (Internal Medicine)

11/07/07 - The Board of Medicine accepted a Voluntary Surrender of License from Richard P. Levy, M.D. Professional misconduct allegations are pending against Dr. Levy before the Board concerning conduct in the State of Vermont where it was alleged Dr. Levy prescribed medication for a close friend, who was not a patient at the time.

- **All Orders are public documents and may be obtained by calling the Board office at (603) 271-1203. There is a fee of \$0.25 per page for all Orders.**